

Chapter 8.68 SMOKING IN PUBLIC PLACES[11]

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8.68.010 Purpose and findings.

The city council finds that the smoking of tobacco, or any other weed or plant, is a medically documented danger to health and a material annoyance, inconvenience, discomfort and health hazard to those who are present in confined spaces, and in order to reduce exposure to environmental tobacco smoke and to serve the public health, safety and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any other weed or plant, in public places and places of employment as stated and required in this chapter. (Ord. C-7955 § 1, 2004).

8.68.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be given the following definitions:

- A. "Adjacent water areas" shall mean fifty feet (50') seaward of the mean high tide line of the city beaches.
- B. "Bar" means an area which is devoted to serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages. Bar shall also include a nightclub or cabaret where entertainment and/or dancing are provided in addition to the consumption of alcoholic beverages or food.
- C. "Beach bike path" shall mean that portion of the bike path located on the sand areas of the beach from the eastern edge of the Long Beach Shoreline Marina parking lot at approximately Alamitos Avenue easterly to the southeastern corner of the intersection of Ocean Boulevard at approximately Bayshore Avenue.
- D. "Beach launch ramps" shall mean the launch ramps located at the foot of Claremont Avenue and Granada Avenue.
- E. "Childcare facility" means any location or portion thereof where children other than those of the owner, operator or proprietor are cared for or supervised in exchange for anything of value.
- F. "Cigar" shall have the same definition as California Health and Safety Code section 104550, as currently defined or as may be amended.
- G. "Cigarette" shall have the same definition as California Health and Safety Code section 104556 as currently defined or as may be amended.
- H. "City facility" means any enclosed structure wherever owned or used by the city of Long Beach for its operations or activities.
- I. "City vehicle" means any vehicle owned and operated by the city for public purposes.
- J. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit.
- K. "Employer" means any person who employs the services of any person other than himself or herself.
- L. "Enclosed" means closed in by a roof and four (4) walls with appropriate openings for ingress and egress but does not include areas commonly described as public lobbies.
- M. "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.
- N. "Playground", for purposes of California Health and Safety Code section 104495, is more specifically defined to mean twenty five feet (25') from the edge of a sand area within a city park or recreational area specifically designed to be used by children and that has play equipment installed in it.
- O. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, auditoriums, gymnasiums, waiting rooms, reception areas, educational facilities, health facilities, public transportation facilities, bowling alleys, bingo parlors, hair salons, laundromats, gaming clubs, bars, taverns, hotel and motel lobbies. A private residence is not a "public place", except that the enclosed common areas of apartment or condominium structures, if any, shall be considered "public places" for purposes of section 8.68.060.
- P. "Service line" means an indoor line or area in which persons await service of any kind, regardless of whether or not such service involves the exchange of money. Such service shall include, but is not limited to, sales, providing information, directions, or advice and transfers of money or goods.
- Q. "Smoke" or "smoking" shall mean the carrying of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar or cigarette of any kind, including, but not limited to, tobacco, or any other weed or plant.
- R. "Workplace" means any enclosed area of a structure or portion thereof occupied by any entity and frequented by employees during the normal course of their employment where clerical, professional, manufacturing, business services or other normal and customary activities of the entity are performed or where other work is done at that location. Workplace also includes, but is not limited to, spaces in office buildings, medical office waiting rooms, libraries, museums, gaming clubs, bars, taverns, employee lounges, employee breakrooms, conference rooms, and employee cafeterias. A private home is not a workplace, except where such home is used as a "childcare facility" as defined in subsection 8.68.020.E. (Ord. ORD-05-0015 § 1, 2005; Ord. C-7955 § 1, 2004).

8.68.030 Smoking prohibited--Elevators.

Smoking is prohibited and is unlawful within elevators in buildings generally used by and open to the public, including elevators in office, hotel and multi-family buildings. (Ord. C-7955 § 1, 2004).

8.68.040 Smoking prohibited--Hospitals, healthcare facilities and childcare facilities.

- A. Smoking is prohibited in public areas of healthcare facilities and hospitals, as defined in section 1250 of the California Health and Safety Code.
- B. "Staff and visitor smoking prohibited" signs shall be conspicuously posted in public areas of healthcare facilities.
- C. Smoking is prohibited in all childcare facilities as defined in subsection 8.68.020.E. (Ord. C-7955 § 1, 2004).

8.68.050 Smoking prohibited--Public meeting rooms.

Smoking is prohibited and is unlawful in public meeting rooms, hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted, when the public business requires or permits direct participation or observation by the general public. (Ord. C-7955 § 1, 2004).

8.68.060 Smoking prohibited--Enclosed public places.

Smoking is prohibited and is unlawful in every enclosed "public place" as defined in subsection 8.68.020.O. Every owner, manager or operator of such facility shall post signs conspicuously in the premises stating that smoking is prohibited within the "public place" as defined in section 8.68.020 and in the case of motion picture theaters, such information shall be shown upon the screen for at least five (5) seconds before showing feature motion pictures. (Ord. C-7955 § 1, 2004).

8.68.065 Smoking prohibited--City beaches, beach bike path and beach launch ramps.

Smoking shall be prohibited on all sand areas and adjacent water areas of city beaches, the beach bike path and beach launch ramps, with the exception of designated outdoor dining areas or permitted beach concessions and permitted activities, including, but not limited to, filming and/or special events. (Ord. ORD-05-0015 § 3, 2005).

8.68.070 Smoking prohibited--Public restrooms.

Smoking is prohibited and is unlawful in public restrooms. (Ord. C-7955 § 1, 2004).

8.68.080 Smoking prohibited--Indoor service lines.

Smoking is prohibited and is unlawful in indoor service lines in which more than one person is giving or receiving services of any kind. (Ord. C-7955 § 1, 2004).

8.68.090 Smoking prohibited--Eating establishments and bars.

A. Smoking is prohibited and is unlawful in every publicly or privately owned enclosed coffee shop, cafeteria, short order cafe, luncheonette, sandwich shop, soda fountain, restaurant, gaming club, bar, tavern, or other eating establishment serving food.

B. Establishments, as defined in subsection A of this section, which maintain an outdoor seating area shall maintain a contiguous no smoking area of not less than two-thirds (2/3) of both the outdoor seating capacity or the outdoor floor space in which customers are being served. (Ord. C-7955 § 1, 2004).

8.68.100 Smoking prohibited--Retail food production and marketing establishments.

Smoking is prohibited and unlawful in any retail food marketing establishments including grocery stores and supermarkets. (Ord. C-7955 § 1, 2004).

8.68.110 Regulation of smoking in the workplace.

A. Smoking is prohibited in all workplaces in the city of Long Beach as defined in subsection 8.68.020.R.

B. Smoking is prohibited in conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, elevators, cafeteria, lunchrooms, employee lounges, employee breakrooms, designated eating areas and common areas.

C. This section is not intended to regulate smoking in the following places and under the following conditions:
1. A private home which may serve as a workplace except when used as a "childcare facility" as defined in subsection 8.68.020.E.

2. Any property owned, leased or used by governmental agencies other than the city of Long Beach.

D. The provisions of sections 8.68.090 and 8.68.100 shall govern the public access areas of such facilities; however, such employers shall otherwise comply with provisions of this section 8.68.110. (Ord. C-7955 § 1, 2004).

8.68.120 Posting of signs required.

A. Except where other signs are required, whenever in this code smoking is prohibited, conspicuous signs shall be posted so stating, containing all capital lettering not less than one inch (1") in height on a contrasting background. It is the duty of the owner, operator, manager, or other persons having control of such room, building, workplace, or other place where smoking is prohibited, to post such signs or to cause such signs to be posted.

B. A warning sign must be posted at each sales counter and on each vending machine where tobacco products are sold. This warning sign must be posted in a place that can be clearly seen by the public, and the size and format of the warning sign shall comply with California Code of Regulations, title 17. (Ord. C-7955 § 1, 2004).

8.68.130 Structural modifications not required.

A. It shall be the responsibility of employers to provide smoke free areas for nonsmokers within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.

B. Nothing in this chapter shall require the owner, operator, or manager of any theater, auditorium, healthcare facility, or any building, facility, structure, or business, to incur any expense to make structural or other physical modifications to any area or workplace.

C. Nothing in this section shall relieve any person from the duty to post signs or adopt policies as required by this chapter. (Ord. C-7955 § 1, 2004).

8.68.140 Administration and enforcement.

A. The no smoking ordinance established by this chapter shall be administered by the department of health and human services.

B. Any person may register a complaint for an alleged noncompliance with this chapter with the department of health and human services. (Ord. C-7955 § 1, 2004).

8.68.150 Exemptions.

Any owner or manager of a business or other establishment subject to this chapter may apply to the city health officer for an exemption or modification to any provisions of this chapter due to unusual circumstances or conditions.

A. Such exemption shall be granted only if the city health officer finds from the evidence presented by the applicant for exemption at a public hearing that the applicant cannot comply with the provisions of this chapter for which an exemption is requested without incurring expenses for structural or other physical modifications, other than posting signs, to buildings and structures.

B. The applicant for an exemption shall pay concurrent with the application, the fee, as prescribed by resolution of the city council, to cover cost of the hearing and noticing of the hearing. (Ord. C-7955 § 1, 2004).

8.68.160 City facilities.

There shall be no smoking in any "city facility" as defined in subsection 8.68.020.H or in any "city vehicle" as defined in subsection 8.68.020.I or in any covered area of the Long Beach airport, notwithstanding any exception or exemption contained in any other provision of this chapter. (Ord. C-7955 § 1, 2004).

8.68.170 Tobacco products distribution.

A. No person or entity shall sell or otherwise distribute any cigarette or other tobacco product unless such cigarette or tobacco product is in the manufacturer's original package with all required health warnings.

B. No person or entity shall distribute or furnish without charge or cause or authorize distribution or furnishing of any cigarette or other tobacco product in any public place or at any event to which the public is invited unless such activity is authorized in a permit for staging of a special event which is subject to revocation for violation of the requirement of subsection A of this section.

C. The provision of subsection B of this section shall not apply to private functions or nightclubs, where minors are not present and such distribution is authorized by the proprietor. (Ord. C-7955 § 1, 2004).

8.68.180 Billboard advertising.

No person or entity shall place, establish, keep, maintain or locate any advertisement for any tobacco product on any billboard within five hundred feet (500') of or so oriented that the message portion of the sign is visible from any school, childcare center, nursery school, hospital, place of worship or recreational facility. (Ord. C-7955 § 1, 2004).

8.68.190 Violations and penalties.

Any person or entity violating any provision of this chapter is guilty of an infraction, and upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars (\$100.00) for a first violation, two hundred dollars (\$200.00) for a second violation within one year, and five hundred dollars (\$500.00) for a third and for each subsequent violation within one year. (Ord. C-7955 § 1, 2004).

8.68.200 Retaliation.

No person shall discharge, refuse to hire, or in any other manner retaliate against any employee, applicant, or patron exercising any right or privilege created by this chapter. (Ord. C-7955 § 1, 2004).

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